

SUBJECT: Initial Assessment -- NDAA Veto and Impact on National Guard

1. EVENT. President Bush vetoed the FY08 NDAA on 28 December.

2. BACKGROUND AND REASON

a. The President vetoed the bill reportedly after the Iraqi government stated its intent to withdraw its assets from US banks if Section 1083 of the bill were to become law. That section, entitled "Terrorism Exception to Immunity" does not mention Iraq by name but contains language saying that any country which was at one time designated as a state sponsor of terrorism can be sued by victims in US courts for personal injury or death at the time the state was so designated. The Iraqi government apparently felt that that language would apply to them and thus threaten their assets at a time when such lawsuits would hinder their stabilization efforts.

b. In preventing the bill from becoming law, the President used a tactic known as a "pocket veto." Under the U.S. Constitution, if the president does not sign a bill within 10 days after the bill is presented by Congress, it becomes law -- unless Congress is not in session at the time, in which case the bill dies. Both the House and the Senate adjourned December 19th, the same day the bill was sent to the President. The Senate held pro-forma sessions every 3 days to prevent recess appointments but this did not prevent pocket veto.

c. The White House has issued a Memorandum of Disapproval providing further detail. It is available online at <http://www.whitehouse.gov/news/releases/2007/12/20071228-5.html>

3. WHAT'S NEXT

a. Some doubts do remain as to the validity of this veto and an override vote may still occur in at least one chamber of Congress. Such a vote would likely be only a political gesture, however, and the final bill will most likely be amended as the Administration has requested.

b. The Administration and Congressional leadership have emphasized that they strongly support speedy passage of the NDAA, and it is likely that a slightly amended version of the NDAA will pass quickly once Congress returns to session at the end of January.

c. The House of Representatives reconvenes January 15. The Senate reconvenes January 22.

4. EFFECTS OF VETO ON THE NATIONAL GUARD – A TENTATIVE ASSESSMENT

a. Bonuses and Special Pay Incentives Expire. The bill would have extended several important Reserve Component bonuses and special pay incentives which, as a result of the veto, have now expired. These include:

- Selected Reserve reenlistment bonus;

- Selected Reserve affiliation or enlistment bonus;
- Special pay for enlisted members assigned to certain high priority units;
- Ready Reserve enlistment bonus for persons without prior service;
- Ready Reserve enlistment and reenlistment bonus for persons with prior service; and the Selected Reserve enlistment bonus for persons with prior service.
- Repayment of education loans for certain health professionals who serve in the Selected Reserve
- Special pay for Selected Reserve health professionals in critically short wartime specialities.

b. Some Part of Pay Raise Delayed. U.S. Military personnel will not receive the 3.5 percent raise in military pay authorized by the act on January 1. Instead, troops will receive a raise of 3.0 percent by previous law. The difference between a 3.0 percent pay raise and 3.5 percent pay raise are not great. For an E-5 with six years of service the difference is about \$12 per month. For an E-8 with 16 years of service, it's about \$19 per month, and for an O-3 with 10 years of service, it's about \$25 per month. In any case, the President has asked that when Congress returns to consideration of the NDAA that, in addition to striking section 1082, that it also state that the additional .5% pay raise be enacted retroactive to 1 Jan so that troops will, in the end, lose no money.

c. Additional effects of interest to the National Guard

- Delay by up to two months of all provisions of the National Guard Empowerment Act.
- Several provisions have effective dates tied to the date of enactment. These include:
 - Sec. 1082 requirement that within 60 days of enactment, SecDef shall enter into contract with a federally funded research center for support of advisory panel on civil support.
 - Sec. 1821 requirement that within 1 year of enactment, CJCS reports to SecDef on his review of NORTHCOM positions with goal of significantly increasing the number of RC members assigned.
 - HASC Report 110-146 page 472-473 requirement that within 1 year of enactment, SecDef report on whether TAG duties should qualify as Joint Duty.

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